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No. 95-898

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1995

WILLIAM T. SENTER,

Petitioner,

vs.

HUGHES AIRCRAFT COMPANY, and
ELECTRONIC AND SPACE TECHNICIANS LOCAL 1553
a Labor Union,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITIONER'S REPLY BRIEF

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PETITIONER'S REPLY BRIEF

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Respondent's ("Hughes") arguments highlight and underscore why the Court should grant the Petition.

"If it ain't broke, don't fix it!" Hughes urges. (Opp. 19.) Yet, with the amazing admission that follows this bit of bravado, Hughes illustrates precisely how and why the "fair representation" scheme of labor-management grievance procedures that the Court envisioned in *Vaca v. Sipes*, 386 U.S. 171 (1967), is broken and needs "fixing" to update it to the 1990's reality of corporate mergers, plant closures, work force downsizing, and quiescent labor unions.

The case under review arose out of Petitioner's ("Senter") loss of his job on July 10, 1992. The loss of the job (like so many millions of other jobs lost in the 1990s) resulted from a company *merger* which *downsized* the work force and *closed* a plant. In this case, the labor-choking merger was achieved by consolidating two divisions of Hughes Aircraft Company. The product lines and work force where Senter worked were moved to the location of the other division (Carlsbad), and the separate bargaining unit agreements ("CBA") of the two divisions were united by assimilating the "Carlsbad Agreement" into the CBA which covered Senter's job, that is, the "Southern California Agreement." (See, Opp. E1-E3.) Senter lodged two grievances with his union, against Hughes, in an effort to fight the downsizing-away of his contractually guaranteed, union protected, job. The union processed each grievance through several steps, but then aborted the procedure before proceeding to arbitration.[1] Thereupon, Senter brought his grievance to court.

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1. The content of the two grievances are appended hereto as Reply Appendix "A" and "B" respectively. The first grievance (Reply Appendix "A," Reply App. 1-4) was filed three months before Senter's layoff took effect. It grieved Hughes' decision to "delete" Senter's job classification from the bargaining unit. The grievance process on this first grievance was aborted at Step 2 when Hughes and the union proclaimed the grievance to be "premature." After the layoff on July 10, 1992, the job classification deletion grievance was renewed and incorporated into a second grievance (Reply Appendix "B," Reply App. 5-6) which grieved the layoff on the basis of non-union employees performing bargaining unit work. The grievance process on the second grievance was aborted after processing it through step *three* of the four-step procedure (Opp. 5; accord, Pet. 9).

The pretext asserted for abandoning the second grievance, after pursuing it through *three* steps, is that the union had determined that the grievance had "a lack of merit." To wit, the union president and the union business agent averred in declarations to the trial court that: "Due to its finding of a lack of merit regarding Senter's grievance, the Union's Executive Board determined that it would not pursue Senter's grievance to arbitration."

I. Hughes' Astounding Admission, That Senter's Employment Fate At Hughes Had Already Been Decided In "Negotiated" Agreements With The Union *Before* The Grievance Process Over The Right To Keep His Job Ever Began, Reveals That The Labor Law Policy Envisioned In *Vaca vs. Sipes* Is Indeed "Broke" And Needs "Fixin." The Court Now Has The Opportunity To Send A Message That The Mere Staging Of A Phony Grievance Process Does Not Constitute "Fair Representation."

In describing how Senter's collective bargaining unit job was *downsized* away with the quiescence of the union, Hughes admits that the job was already "bargained" away by the union in negotiations over the *merger* before Senter ever grieved his job loss. To wit, Hughes acknowledges (at Opp. 20):

> Hughes and the Union bargained over the effects of the [facility] closure and agreed to negotiate the eventual merger of the bargaining units under a single collective bargaining agreement by 1994 (Pet. 6-7; Opp. App. E1-E3). The Union sought many things from Hughes while bargaining over the effects of the closure of Petitioner's facility, and Hughes sought a number of concessions from the Union. In the end, there were compromises on both sides. The Union gained seniority and grandfathered wage protections for those workers transferring to Carlsbad, but did not prevail on transferring Petitioner and other support personnel with the product line (Opp. App. A4). When Petitioner filed a grievance [sic], the Union processed it vigorously through three steps . . .

In other words, with full knowledge that Senter's employment fate had already been decided between them, both the union and Hughes pretended to conduct "grievance proceedings" over Senter's claimed right to keep his job.

With the outcome of the grievances foreordained by the *merger*

negotiations,[2] the steps of going through the various proceedings, required by the CBA to grieve a violation of the contract, were empty "show trials" reminiscent of those conducted by authoritarian societies where they "pretend" to engage in a fair proceeding. Such sham hearings are a mockery of the "fair representation" procedures that this Court envisioned in 1967 when it decided *Vaca vs. Sipes*.

Even assuming, *arguendo*, that the union had, under the guise of *merger* negotiations, the legal right to negotiate away Senter's collectively bargained for contract right (which Senter denies), what purpose is served in processing his layoff grievance through **three** grievance steps (Reply App. 5-6), if the union had already agreed that Senter's job would not be transferred to Carlsbad?

Moreover, what possible purpose is served in engaging in **any** grievance hearings on Senter's initial grievance (Reply App. 1-4), which grieved the decision to "delete" his job classification from the bargaining unit, and then disposing of said grievance as "premature," if it was already decided, and agreed to, that Senter's job classification would no longer be in the bargaining unit after the move to Carlsbad? [The Court's attention is respectfully drawn to the fact that his initial grievance expressly addresses the issue of why Senter's job cannot be simply "negotiated" away under the CBA (Reply App. 2-3).]

For that matter, how fair a representative of Senter's interests, how good an advocate for his claims, can the union be in the grievance process, and at the grievance hearings, when the union had already "negotiated" away the job over which Senter grieves?[3]

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2. The merger negotiations were not conducted openly and were not subject to the scrutiny of those whose fate was being determined. Rather, Hughes and the Union decided on the effects of the merger in unrecorded meetings informally held in various undisclosed restaurants and kept "secret" from the rank and file union membership (Pet. 6).

3. In his declaration to the trial court, filed in opposition to the summary judgment motions, Senter catalogued the various ways in which the union had demonstrated its lack of loyalty to him and its lack of proper advocacy in the grievance process. He also averred that he had been specifically and expressly "warned by the union that [he] would not be allowed to have an attorney accompanying [him] in the grievance meeting."

The only conceivable purpose for conducting such (sham) grievance proceedings is to prevent the aggrieved employee from having his "day in court" under the rule of *Vaca vs. Sipes.*

When faced with an employee's grievances over a job that has already been "negotiated" away by an emasculated labor union, staging phony grievance hearings serves only to shield (and improperly so) the devious and erring employer from the just effects of a breach of a collective bargaining agreement.

The scheme Hughes employed to circumvent its existing contract promises to its unionized work force, when it had *merger* and *downsizing* the labor force in mind, is a perversion of both the letter and the spirit of the law laid down in *Vaca vs. Sipes.* To the extent that the scheme was successful, it signals that the historic labor policy of "fair representation" through the union grievance process, which served the country well in an earlier age, no longer works as it should in the context of the modern labor-management situation.

Hughes asserts that Senter "is swimming upstream" with his Petition, because so few cases of unfair representation have reached this Court (Opp. 19). Senter respectfully submits that perhaps this is so because, when proceeding in the unscrutinized grievance process, unions and employers have been successful in hiding many sins behind the mantra of "fair representation." A more precise definition of what constitutes unfair representation in a union's handling of an employee's grievance is needed.

However, without a doubt, the principal reason why so few complaints about unfair labor union grievance proceedings against employers receive review by this Court is because of the many nearly insurmountable obstacles that obstruct an aggrieved, unionized employee's road to judicial examination. Very rarely does the lowly wage-earner have the means, either financial or otherwise, to bring his cause to the court, let alone to sustain that cause all the way to the Supreme Court, against the combined forces and, often vast, resources of both the union and the employer.

As a result of the difficulty in bringing a case such as this to the courts, the opportunities to provide guidance on when, in the context of the modern labor-management relationship, the employee-grievant is jurisdictionally barred from challenging his employer in court are

few. This case presents such an opportunity, and the Court should take it.

II. The Court Should Grant The Petition Because The Right To A Fair Hearing Cannot be Abridged. Respondent's Claim That The Court of Appeals Decided The Case Fairly, On Evidence Presented In the Record, Is Not Grounded In Fact.

With the arrogance reminiscent of how Hughes treated the grievance hearings concerning Senter's right to a job, it now glosses over Senter's charge that his Constitutionally protected right to a fair hearing in the Ninth Circuit Court of Appeals has been abridged by not having been given the opportunity to brief the court on the points upon which his case was decided. Hughes says: "The Ninth Circuit's decision, even if wrongly decided, has a very circumscribed effect, indeed, limited to Petitioner alone. No legal issues of broad import are involved here."

The right to a fair hearing, to a fair procedure, is Everyman's right -- or, at least -- is every American's right. The question of whether a court of law has abridged that right is of broad import, indeed.

Significant is the fact Hughes does not deny Senter's assertion (at Pet. 11) that:

> The [Ninth Circuit Court of Appeals] determined, *sua sponte*, without asking for briefing from the parties or hearing argument on the point, that the CBA "does not vest rights in employees by virtue of a particular division they work for, but rather by virtue of their being employed at a particular Hughes plant." ([Pet.] App. 3).

Nor does Hughes dispute Senter's claim (at Pet. 11) that:

> This *sua sponte* finding and conclusion by the appeals court is not only plainly erroneous and is without any substantiation in fact, it is also in contradiction to the

admitted conduct of the parties and the agreed facts of the case.

Rather, Hughes defends the appeals court decision by ignoring the plain language of the explanation the court gives for its ruling (Pet. App. 3), and speculates, instead, on what the Ninth Circuit might have decided had it entertained the arguments Senter presents, and considered the issues Senter raises, in his denied Petition for Rehearing (Pet. App. 18-31).

Hughes ruminates that: "The Ninth Circuit certainly is fully capable of reading the plain language of the Agreement and ascertaining that the "Carlsbad" facility . . . is not a facility where [Senter] has any exercisable contract rights." And, supposes that: "Similarly, the Ninth Circuit is capable of reading the Supplemental Agreement #11 . . . and ascertaining that it has no bearing on the case because Carlsbad is not a (1) new and (2) non-union location." And, speculates that: "Likewise, the Ninth Circuit competently could determine from reading the collective bargaining agreement in the record that Carlsbad did not constitute a "successor" or "assignee" under their provisions or applicable federal labor law." (Opp. 14).

Hughes' speculations on what the Ninth Circuit might have ruled are just that, speculations. Moreover, Hughes' ruminations are not grounded in fact; nor are they supported by the evidence on the record.

It is an undisputed fact that the Southern California Agreement operated in Carlsbad *after* the move. Therefore, arguments over whether the successorship clause applies, and/or whether Supplemental Agreement #11 applies, to give Senter contract rights at Carlsbad, are all rendered moot. Hughes and the union agreed that the CBA applies in Carlsbad. Senter cannot, rightfully, be excluded from that agreement.

Even if, *arguendo*, Senter cannot look to the merger agreements for his contract rights in Carlsbad, such rights, indeed, do flow to him also from the "Successor" clause in the Southern California Agreement (see, Opp. C3). Hughes' argument that the successorship provision has no application to this case, because the provision

applies, not to divisions of Hughes, but "only if an entity other that Hughes assumes control" (Opp. 7), smacks of Orwellian "doublethink." The argument also flies in the face of the plain facts.

To wit, the "Successor" clause in the Southern California Agreement expressly acknowledges that the "Employer" (Hughes Aircraft Company) has severable *parts* (divisions) that can operate apart from the whole. The provision states: "This Agreement shall be binding on any successor or assignee of all or a major *part* of the Employer." It is not disputed that *something less than all* of Hughes Aircraft Company was Senter's employer under the terms of the Southern California Agreement. See, Reply Appendix "C" (Reply App. 7). The Carlsbad Agreement is in accord. By contract definition, the "Employer" in the Carlsbad Agreement is restricted to the "Industrial Products Division" and the "Hughes Technology Center" *part* of Hughes Aircraft Company. See, Reply Appendix "D" (Reply App.8-9).

Senter has no rights under the Carlsbad Agreement, Hughes professes. Ergo, the divisions of Hughes that operated in Carlsbad were not the employer of Senter. It follows, as night follows day, the two employers are not the same. Therefore, when the Carlsbad employer *merged* its operations with those of the employer of the Southern California Agreement, the "Successor" clause applied to bind the Carlsbad employer to the provisions of the Southern California Agreement.[4]

The arguments concerning the non-applicability of Supplemental Agreement # 11 (Opp. D2) are equally Orwellian. The Agreement offers the union the "opportunity" to represent employees hired in, or transferred to, the San Diego area. Hughes says that the Agreement "has no bearing on this case" because Hughes did not transfer the workers to a "new" and "non-union" facility (Opp. 8, 14).

Hughes' professed understanding of what it meant by Supplemental Agreement # 11 is again a surprising admission, which signals that the traditional constraints the law imposes on the labor-managment relationship may no longer be securely in place. Is not an agreement by an employer to give assistance to a union in organizing

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4. The Carlsbad Agreement does not have a successorship clause.

employees an unfair labor practice? Is not such an agreement an unlawful collusion between labor and management? Is the duty of loyalty that a union owes its members not compromised by such an agreement?

Also, Supplemental Agreement #11 was made very shortly before the merger was announced.[5] Why would Hughes make an agreement concerning transfers of workers to "new" facilities, when it intended all along to transfer the workers to an "existing" facility?

But, putting aside these interesting questions, Hughes' assertion of what it meant by Agreement # 11, at best, creates an ambiguity which, in the summary judgment setting, cannot be resolved in Hughes' favor. An ambiguity in the agreement exists if it can be read to mean, as Hughes argues, that the "may be opened" language in the first paragraph does not mean to "any facility established in the San Diego area" as is stated in the second paragraph, but means, instead, that the facility must be "new" and must be "non-union."

Senter understands the agreement differently. It is also reasonable, and entirely possible, that the union understood the agreement to cover the move to Carlsbad, and intended it to mean so.

It is hornbook law that ambiguities in a contract are resolved against the maker. However, if the inconsistent language in the agreement cannot be reconciled by interpreting the inconsistency against Hughes, then resolving the ambiguity involves determining what the intentions of the parties were, and such a determination cannot be made by summary judgment, for the issue is one of fact.

It is, therefore, highly unlikely that the Ninth Circuit would have adopted the position Hughes urges. A remand order, so the court below can adjudicate these matters fully, is appropriate.

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5. The date of Supplemental Agreement #11 is November 2, 1991. In late 1991 or early 1992, Hughes informed the union of its decision to consolidate and merge operations and move its product lines from its plant in Rancho Santa Margarita to its plant in Carlsbad (Pet. 6).

CONCLUSION

For all the foregoing reasons, the petition for a writ of certiorari should be granted.

JANUARY 18, 1996

Respectfully submitted,

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REPLY APPENDIX "A"

RE: EMPLOYEE GRIEVANCE OF:

EMPLOYEE: WILLIAM T. SENTER
JOB TITLE: TIMEKEEPER A
JOB CODE: 95303
DATE: MARCH 18, 1992
SUBJECT: LETTER OF LAYOFF OF MARCH 16, 1992

The current Bargaining Unit Agreement between Hughes and Local 1553 (at preamble thereto on page 1 thereof) expressly provides that "timekeeper" is to be a bargaining unit classification. However, the "Letter of Layoff" delivered to WILLIAM T. SENTER on March 16, 1992 announces, in effect, that IEG plans to eliminate that bargaining unit job classification. Such a plan violates the bargaining unit agreement and constitutes a breach of Article II, Section F (1) of said contract, which provides:

> The Employer agrees that salaried and other non-bargaining unit employees **shall not** perform work regularly assigned to Bargaining Unit employees, except in cases of emergency, job instruction, developmental work, or to alleviate production difficulties. This section is not to be used to circumvent the integrity of the bargaining unit classifications or the terms and conditions of the Agreement. (emphasis added.)

Thus, the regularly assigned duties of a Bargaining Unit timekeeper are not to be assigned to anyone outside this bargaining unit. Since Carlsbad does not have a Bargaining Unit timekeeper, and since the need for such timekeeping services will continue in Carlsbad after the merger is completed (because some 55 hourly jobs are also being moved), it follows that the function of a Bargaining Unit timekeeper cannot be lawfully eliminated.

At the election of the Employer, a Bargaining Unit timekeeper is, however, permitted to perform all the functions of a salaried timekeeper. The reverse cannot be done.

Nor would the merged successor-employer in Carlsbad be permitted to create a new job classification to perform the same bargaining unit duties that WILLIAM T. SENTER now performs.

> Article IV, section I (5) states:
> A new Bargaining Unit Job Classification will not be added during the term of this agreement where an existing Job classification duplicates it to the extent of prescribing the identical duties and qualifications.

Supplemental Agreement #4 clarifies the intent of provision I (5) by explaining at paragraph 5:

> The splitting off of job duties from existing job classifications or the combining of existing job duties into new or revised job classifications and the establishment of a new job classification continues to be the function of Management. **However, if as the result of such action a job classification is established which then duplicates an existing job classification by prescribing identical duties and qualifications, it would be a violation of Article IV, Section I (5).** (emphasis added.)

The alleged justification that the Carlsbad Division has historically had a Bargaining Unit Contract which allowed a salaried employee there to perform the functions that are a bargaining unit classification here, is totally immaterial to the binding effect of the Agreement at hand, which expressly states at Article II, Section E (1) that: "This Agreement shall be binding on any successor or assignee of all or a major part of the Employer."

The News and Views published statement of February 28, 1992, signed by Bob Phelps and John Kolostyak makes it very clear that the new merged entity of MSD and IPD will indeed be the successor to the current employer in every sense of that word. The publication states: "We would like to reemphasize that this consolidation is not an absorption of MSD by IPD, but a merger of the two divisions. Employees of both divisions will be affected."

For all the reasons stated the announced termination of WILLIAM T. SENTER'S employment, as "Timekeeper A," and the elimination of his job function is a breach the bargaining unit agreement and a violation of his rights thereunder. He respectfully requests the decision to eliminate his job and not to offer him employment in Carlsbad be reversed.

signed: _____
WILLIAM T. SENTER

(The above grievance memorandum was submitted to the union for filing with the company. It was assigned Grievance No. RSM3-9208 and was received by the company on March 20, 1992. On the official "Grievance Form-Union Submittal- Step 2," which was filed with company, the union summarized and described the grievance as follows):

The company is in violation of articles two, four, eighteen, and supp. agreement #4.
I have received a notice of layoff. If I am laid off it will be improper and in violation of the above mentioned articles.
Reasons: (Please see attached documents).

Settlement: Cease and desist such discriminatory practices. Transfer me to Carlsbad as an hourly timekeeper.

/s/ WILLIAM T. SENTER — 03-19-92
Employee's Signature — Date

/s/ J.C. BIANCARDI — 3/20/92
Certified Steward's Signature — Date

(Because Senter did not charge Hughes with violating article 18 [the seniority provision], the following amendment was submitted to make certain that the nature of his grievance would not be misunderstood.)

RE: AMENDMENT TO EMPLOYEE GRIEVANCE OF:

EMPLOYEE:	WILLIAM T. SENTER
GRIEVANCE NO:	RSM3-9208
JOB TITLE:	TIMEKEEPER A
JOB CODE:	95303
DATE:	MARCH 28, 1992
SUBJECT:	LETTER OF LAYOFF OF MARCH 16, 1992

PLEASE TAKE NOTICE that I wish to amend my written grievance of March 18, 1992, submitted on my behalf by the Union on or about March 20, 1992, to correct an error that appears on the first page thereof.

The Union-provided form portion of my grievance (first page) incorrectly summarizes my grievance in that it provides that by failing to include me in that class of employees whose job functions are transferred to Carlsbad, I claim a violation of Article "eighteen" of the Union bargaining agreement. My correct grievance is as stated in the signed attachment to that form, and I make no charge that Article XVIII, the "seniority" provisions of the contract are violated in my case.

Rather, I base my grievance solely on the charge that my job function of "hourly timekeeper," is a bargaining unit job, which is unlawfully deleted and assigned to non-union personnel in direct violation of Article II, section (F)(1) of the contract. I further charge that the deletion of my "union job" is not needed or authorized by Article IV, and does not fall into the "management decision" exception of Letter # 4, because nothing prevents the company from continuing its present policy of also assigning to me the functions of a "salaried" timekeeper as it has done for the past two years, which job I have always performed in exemplary fashion.

/s/ WILLIAM T. SENTER
April 1, 1992

REPLY APPENDIX "B"

[official grievance form]

GRIEVANCE FORM
UNION SUBMITTAL
STEP NO. 2

Union Grievance No. RSM 7-9211 Date filed: 7/24/92
Name: WILLIAM T. SENTER Source No.: 94/02/10
Job Classification: TIMEKEEPER "A" Shift: 1
Supervisor: DAVE HOLMGREN Dept.Mgr.: RON PENLAND
Check One: xx EMPLOYEE GRIEVANCE

Provide details of grievance specifying event(s); including date and place of occurrence and article, section and paragraph allegedly violated:

The Company is in violation of Article I, section (C) (1); Article II, sections E (1) and F (1); Article IV, sections (I) (1) (3) and (5); Article XVIII, section (A) (1); Article XXIV, sections (B) (1) and (C) (1) Supplemental Agreements, nos. 4, 7, and 11 and all other applicable provisions of the Collective Bargaining Unit Agreement between Hughes and Local 1553 (hereafter,"CBA").
The violation is as follows:
On March 16, 1992 I received a "Letter of Layoff." On March 20, 1992 I filed a grievance (Union #RSM 3-9208; Company # 92-08) which is incorporated herein by reference as though set forth in full. The company failed and refused to consider and process such grievance on the alleged claim that the grievance was "premature." On May 1, 1992 I received a second "Letter of Layoff," whereupon I again insisted that my above stated grievance be considered. On May 5, 1992 the Company denied my grievance on the ground that no violation of the CBA had occurred. My repeated written requests to have the matter reconsidered and\or arbitrated (Letters to Mr. Conrad Santos, dated May 29 and June 23, 1992) which are also herein incorporated by reference as though set forth in full, were ignored and\or refused. On June 29, 1992, Legal Counsel for Hughes, Lidia A. Cossi notified me by letter that my layoff notices remained in effect because the Company was "adhering to the (Carlsbad) collective bargaining agreement currently in place." I was

not given a copy of any such alleged contract. On or about July 2, 1992 the RSM and Carlsbad divisions were consolidated and a new accounting and timekeeping system was installed. Many employees for whose time records I had been responsible were transferred to Carlsbad. A week later, on July 10, 1992 I was laid off. The reason given for such layoff was "lack of work." The RSM plant site has not yet closed, and a number of employees including bargaining unit and other hourly workers remain employed at RSM. All timekeeping duties which have been regularly and customarily assigned to me and performed by me pursuant to the CBA effective at RSM have been removed from me and assigned to non-bargaining unit employees.

Settlement:

1. Concede that the RSM CBA remains in full force and effect.
2. Cease using non-bargaining unit employees to perform bargaining unit work in timekeeping.
3. Reinstate me to my position as "Timekeeper A" and transfer me to Carlsbad with all lost wages, benefits and seniority; OR,
4. Compensate me for all lost income and all other lost benefits from the inception of my layoff through the life of the present contract and credit me for all company seniority which would have accrued to me and qualified me for early retirement at age 55.

Employee Grievance:

/s/ WILLIAM T. SENTER — 07/20/92
Employee's Signature — Date

/s/ JEFFIE JACKSON — 7/24/92
Certified Steward's Signature — Date

This section to be completed by the Company:

Company Grievance No. 9211

Signature of Receiving Superintendent/Employee Relations Representative.

/s/ CONRAD SANTOS — 7-22-92
Date Received

REPLY APPENDIX "C"

[entire page 1 of the "Southern California Agreement"]

AGREEMENT

Between
HUGHES AIRCRAFT COMPANY

and
ELECTRONIC AND SPACE TECHNICIANS
LOCAL 1553, AFL-CIO

Effective November 2, 1991
Expires November 5, 1994

THIS AGREEMENT is made and entered into in Los Angeles, California, this 2nd day of November 1991, by and between HUGHES AIRCRAFT COMPANY, a corporation, hereinafter referred to as the "Employer" and ELECTRONIC AND SPACE TECHNICIANS, LOCAL 1553, AFL-CIO, hereinafter referred to as the "Union."

BARGAINING UNIT

The Employer recognizes the Union as the sole and exclusive Bargaining Agent for all production, maintenance, shop clerical employees employed in factory areas, and all employees in the job classifications listed in the Appendices of this Agreement and who are employed by its El Segundo, Fullerton, Newport Beach, Rancho Santa Margarita, Malibu, Torrence, Canoga Park, Long Beach, Irvine Area plants, and the Corporate Headquarters located in Los Angeles, CA, and referred to in NLRB certifications and applicable orders and agreements. Excluded from the Bargaining Unit are all supervisors, all administrative, professional, engineering and office employees, confidential employees, all plant production and security employees, and all Department employees, except timekeepers, all welders and maintenance electricians.

REPLY APPENDIX "D"

HUGHES

Agreement

Between

Hughes Aircraft Company

Industrial Products Division

and

Hughes Technology Center

and

Electronic and Space

Technicians

Local 1553
AFL-CIO
March 4, 1989 through June 27, 1992

[entire page 1 of the "Carlsbad Agreement"]

THIS AGREEMENT is made and entered into at Carlsbad, California, this 4th day of March, 1989 by and between Industrial Products Division and Hughes Technology Center, of the HUGHES AIRCRAFT COMPANY, a corporation, hereafter referred to as the "Employer," and ELECTRONIC & SPACE TECHNICIANS, LOCAL 1553, AFL-CIO, hereafter referred to as the "Union."

BARGAINING UNIT

The Employer recognizes the Union as the sole and exclusive Bargaining Agent for all factory and production, maintenance and warehouse employees as listed in Appendix "C" of this Agreement and who are employed by its Carlsbad, California Area plants of the Industrial Products Division, and Hughes Technology Center, Hughes Aircraft Company, and referred to in the NLRB Certification in Case Number 21-RC-6197 and the applicable NLRB Order and Consent Election Agreement. Excluded from the bargaining unit are all engineering and office employees, all plant and office clerical, all research and development technicians, and all Finance Department employees and all technical employees not engaged in production.